IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: December 12, 2007

OMP No.576/2006

Municipal Corporation of Delhi ..... Petitioner
! Through: Ms.Smita Shankar, Advocate.

Vs.

$ Sh.Madhu Kishan Gupta & Anr ..... Respondents
^ Through: Mr.Sanjoy Bhaumik, Advocate.

CORAM :-
*** HON'BLE MR. JUSTICE ANIL KUMAR**

1. Whether reporters of Local papers may be allowed to see the judgment? YES
2. To be referred to the reporter or not ? YES
3. Whether the judgment should be reported in the Digest? YES

ANIL KUMAR, J.(Oral)

\+ **IA No.13733/2006**
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1. The petitioner seeks condonation of delay in filing the petition/objections under Section 34 of the Arbitration & Conciliation Act, 1996 against the award dated 10th August, 2006 which was received in the office of the petitioner on 11th August, 2006 and pursuant thereto objections have been filed on 30th November, 2006.

2. The petitioner has contended that there is a delay of 14 days which is neither intentional nor deliberate and, therefore, can be

condoned. The ground taken by the petitioner is that on account of necessary procedural steps which were taken the delay occurred. The ground for condonation of delay as taken in the application in para 2 is as under:-

> "2. That the impugned award dated 10.8.2006 was received in the office of the petitioner on 11.8.2006 and thereafter necessary procedural steps were taken for filing the present OMP which took some time and therefore, delay of 14 days is there in filing the same, which is neither intentional nor deliberate and therefore, can be condoned in the interest of justice."

3. The application is contested by the respondent contending that the alleged "necessary procedural steps" cannot come within the meaning of the word "sufficient cause" as contemplated under Section 34(3) of Arbitration & Conciliation Act, 1996. According to the respondent the limitation for filing the objections for setting aside the award is three months, however, within 30 days after the expiry of three months the objections can still be filed provided there is sufficient cause as contemplated under Section 34(3) of Arbitration & Conciliation Act, 1996. Section 34(3) of Arbitration & Conciliation Act, 1996 is as under:-

> "34(3):- An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under Section 33, from the date on which that request had been disposed of by the arbitral tribunal.
>
> Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making

> the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter."

4. The contention of the respondent is that without specifying as to what were the procedural steps, merely stating that delay occurred on account of necessary procedural steps would amount to prescribing a different period of limitation in the cases of the Government or Governmental Agencies and no such provision is made under Section 34(3) of the Arbitration & Conciliation Act, 1996. Relying on the judgments of the Apex Court it was contended that no such privileges can be conferred on the Government or Governmental Agencies to seek condonation of delay or extension of time merely on the ground that the delay has been occasioned due to various channels involved in processing the matter. The respondent specifically relied on 106(2003) DLT 617, Union of India & Ors Vs. Nav Bharat Nirmal Company & Anr.

5. I have heard the learned counsel for the parties in detail. The learned counsel for the petitioner has relied on (2005) 4 SCC 239, Union of India Vs. Tecco Trichy Engineers & Contractors where a delay of 27 days in making the application under Section 34 of the Arbitration & Conciliation Act was condoned. Perusal of the application filed by the petitioner for condonation of delay, it is

apparent that no cogent reasons or facts have been disclosed on the basis of which it can be inferred that the delay is on account of sufficient reason. What is stated is that the delay occurred on account of necessary procedural steps. What are those procedural steps, have not been detailed. In the circumstances there is nothing on record to show that the delay on account of alleged procedural steps occurred on account of bonafide reasons and there is sufficient reason. The judgment relied on by the petitioner Tecco Trichy Engineers & Contractors (Supra) is clearly distinguishable. In the said judgment it was held that delivery of arbitral award under Section 31(5) is not a matter of mere formality but it is a matter of substance, as in this case the Chief Engineer who had signed the agreement on behalf of Union of India and had entered into an agreement with the respondent and who had knowledge about the arbitration matter was not served with the arbitral award, rather it was sent to the General Manager of the Railways who had only referred the matter for arbitration as was required under the contract. In the facts and circumstances of the case it was held that General Manager could not be said to be aware of the question involved in the arbitration nor the factual aspect in detail on the basis of which the arbitral Tribunal had decided the issue before it and consequently unless all these facts could be brought to the notice of the officer dealing with the arbitration who was in charge of those proceedings, the objections to

the award could not be filed. In these facts and circumstances the delay of 27 days was condoned under Section 34(3) of the Arbitration & Conciliation Act holding that there was sufficient reason. In contradistinction no such ground has been taken by the petitioner that the award was not served on the person who was aware of the facts and circumstances of the case or the award did not reach the concerned person within time so that the objections could be prepared within time. What has been stated that the delay occurred on account of necessary procedural steps. A single Judge of this Court in the case of Union of India Vs Nav Bharat Nirman Company & anr had held that condoning delays on account of alleged procedural delays without specifying the reasons for delay will result into prescribing different period of limitation in the cases where the Government or Governmental Agencies are the parties to an award. In was held in Nav Bharat Nirman Company & ors (supra) as under:

> 6. .....Now the question is as to whether on the face of the facts and circumstances disclosed in the application under Section 34(3) of the Act, the Court should exercise its discretion vested in it under the said provisions of law and entertain the present application filed beyond a period of three months. The Legislature in its wisdom has prescribed a time limit of three months for making an application for setting aside an Award and the starting points of limitation are, (i) date of receipt of Award; or (ii) date of disposal of application under Section 33, if made. The proviso permits extension of this period by a further maximum outer limit is three months and 30

> days. In the case in hand the reasons given in the application under Section 34 (3) are routine and stereotyped as it is stated that firstly the delay has been occasioned on account of processing the case at various levels for taking a decision to challenge the Award and then in seeking the appointment of the Government Counsel through the Ministry of Law. Can these reasons be considered sufficient for extension of time in view of the fact that the petitioner is a Government and act through its authorities/officers. In the opinion of this Court the answer is a plain "No" because if these reasons of procedural delay or delay in processing the case in the Government offices is considered to be a sufficient cause for extending the time for making the application under Section 34 of the Act, it would amount to prescribing a different period of limitation in the cases where the Government or governmental agency is a party to an award. If that had been the intention of the Legislature it would have been so reflected in the statute itself. The Apex Court and this Court has held time and again that no special privileges is conferred on the Government or governmental agencies to seek condonation of delay or extension of time merely on the ground that the delay has been accessioned due to various channels involved in processing the matter. In the opinion of this Court the grounds stated in the application do not afford any sufficient cause on account of which the petitioner can be said to have been prevented from making the application within a period of three months. Accordingly the application under Section 34 (3) of the Act merits dismissal and consequently on this short ground alone the application under Section 34 of the Act can also be dismissed.

6. In the circumstances, merely stating that the delay took place on account of necessary procedural steps will not constitute sufficient cause as contemplated under Sectin 34 (3) of the Arbitration and

Conciliation Act, 1996 and the delay cannot be condoned.

7. The grounds on which the award has been challenged are that the dispute no. 3B was not referable and the Arbitrator has erred in referring the dispute which was otherwise time barred and awarded claim no. 4,6,7,8,9,10,11 in favor of respondent no.1 erroneously. Award of future interest has also been challenged. Under claim no. 3B, petitioner had claimed an amount of Rs.22,00,000 on account of various works which were executed by the petitioner under water in foundation and for the extra items executed but not paid. The arbitrator has considered this claim in great detail and has only awarded an amount of Rs. 37,955/- relating to de-watering by pumps and has disallowed the claim for doing various works under water/under foul water and for cutting and straightening of steel and for extra T iron weight. For dewatering done the Arbitrator has relied on CPWD manual volume-II. He has also taken into the consideration the water which must have come on account of rain which was to be pumped out by the petitioner. The award is not patently in violation of any statutory provisions. No cogent ground has been made out as to why this claim could not be referred to the Arbitrator and decided by him. This Court cannot substitute its own decision and conclusions, in interpretation of a contract which is a matter for an arbitrator to decide as appraisement of evidence by arbitrator is never a matter

which the Court questions and considers because the parties have selected their own forum and the deciding forum must be conceded the power of the appraisement of the evidence.

8. Claim nos. 4,6,7,8,9,10,11 have also been considered in great detail by the Arbitrator. He rejected claim 3A and therefore held payment of 10CC against claim no. 3A does not arise and for a claim of Rs.20,22,137.00, an amount of Rs.8,77,565.32 has been awarded. It is no more res integra that there are limits for judicial reviewability and the Courts exercise limited jurisdiction in the proceeding for setting aside an award under Section 34 of the Arbitration and Conciliation Act, 1996. The Courts do not exercise appellate jurisdiction over the verdict of an arbitrator and as such cannot go into the merits of the case nor the court should re-appraise and re-examine the evidence led before the arbitrator. The arbitrator has given sufficient and cogent reasons for deciding the claims of the claimant. In deciding claim nos. 6,7,8 & 10 facts have been considered in great detail along with various judgment cited by both the parties. The award is not in violation of statutory provisions and cannot be said to be against the public interest. Similarly for claim no. 9 & 11 it cannot be contended that they are in violation of statutory provisions or there is any error or the findings are such which will shock the conscience of this Court.

9. In the circumstances, there are no grounds to condone the delay in the facts and circumstances of the present case.

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Since the application for condonation of delay in filing the objections have been dismissed, the objections also do not survive.

The objections are dismissed, however, the parties are left to bear their own costs.

December 12, 2007 **ANIL KUMAR, J.**
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